

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

WP(C).No. 22797 of 2007(L)

PETITIONER:

1. N.C.JOY, S/O.N.U.CHACKO,
NADUVILAPARAMPIL HOUSE, ANGAMALI SOUTH PO
(RETD) ENGINEER, CLOCK NO.3220, TELK,
ANGAMALY.
2. T.A.RAPPAI, S/O.ANTHAPPAI,
THAZHATH HOUSE, EAST ANGADI,
ANGAMALI (RETD), CHARGEMAN,
CLOCK NO.3408, TELK, ANGAMALY.

BY ADV. SRI.P.SANTHALINGAM
SRI.A.D.SHAJAN

RESPONDENTS:

1. TRANSFORMER AND ELECTRICALS KERALA LTD,
ANGAMALY, REP. BY THE MANAGING DIRECTOR.
2. CHAIRMAN, TELK, ANGAMALY.
3. STATE OF KERALA, REP. BY SECRETARY TO
GOVT.INDUSTRIES DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

R1 & 2 BY SC SRI.SAJI VARGHESE
R3 BY GOVT. PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX IN W.P(C) 22797/07

EXT.P1: A TRUE COPY OF THE GOVT. ORDER NO: G.O(RT) 387/96/ID DT. 28.3.1998
ISSUED BY GOVT. OF KERALA

EXT.P2(A) : A TRUE COPY OF THE REPRESENTATION DT. 3/9/2001 SUBMITTED BY
THE PETITIONERS AND OTHER EMPLOYEES TO THE 1ST RESPONDENT

EXT.P2(B): -DO- OF THE REPRESENTATION DT. 1/7/2003 SUBMITTED BY THE
PETITIONERS AND OTHER EMPLOYEES TO THE 1ST RESPONDENT

EXT.P2(C): -DO- DT. 20/7/2003 SUBMITTED BY THE PETITIONERS AND OTHER
EMPLOYEES TO THE 1ST RESPONDENT

EXT.P3: -DO- OF THE NOTICE OF THE 1ST RESPONDENT DT. 29/6/1998

EXT.P4: -DO- OF THE JUDGMENT DT. 3.6.2001 IN O.P. NO: 3687/2001 IN THE HIGH
COURT OF KERALA, ERNAKULAM

EXT.P5: -DO- OF THE JUDGMENT DT. 20/10/2003 IN W.P(C) NO: 29529/2003 IN
THE HIGH COURT OF KERALA, ERNAKULAM

EXT.P6: -DO- OF THE JUDGMENT DT. 14.11.2006 IN W.P(C) nO: 25689/2003 IN
THE HIGH COURT OF KERALA, ERNAKULAM

EXT.P7: -DO- OF THE PAPER REPORT IN MALAYALA MANORAMA DAILY

EXT.P8: -DO- OF THE COUNTER AFFIDAVIT IN C.C.(C) NO: 902/2007 DT. 2.7. 2007
FILED BY THE RESPONDENT IN THE CASE BEFORE THE HON'BLE HIGH COURT OF
KERALA, ERNAKULAM.

EXT.P9: -DO- OF THE JUDGMENT IN C.C.(C) NO: 902/2007 DT. 11.7.07 BEFORE
THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM.

EXT.P10: -DO- OF THE PAPER REPORT IN MALAYALA MANORAMA DAILY DT
13/2/2007

RESPONDENTS' EXTs:

EXT.R1A: -DO- OF THE ORDER OF THE BIFR DT. 23.8.995

EXT.R1B: -DO- OF THE G.O. (P) NO: 375/2002 FIN DT. 13TH JUNE, 2002 ISSUED BY
THE GOVT. OF KERALA

EXT.R1C: -DO- OF THE DECISION OF THE BOARD OF DIRECTORS DT. 8.6.2007

EXT.R1D: -DO- OF THE AUDITED BALANCE SHEET OF THE COMPANY FOR THE YEAR
2005-2006

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/TRUE COPY/

P.A. TO JUDGE

V. GIRI ,J.

WP(C).NO. 22797 of 2007

Dated this the 12th day of November, 2007

JUDGMENT

Petitioners are retired employees of the Transformers and Electricals Kerala Ltd. - first respondent. The Government vide order dated 28.3.1988 - Ext.P1, accorded sanction for the revision of the pay scale of the officers of the first respondent and the revision is to take effect from 1.9.1996 and remain operative for 5 years. The benefits contemplated under Ext.P1 was paid to the employees. Apparently, the revision, insofar as the dearness allowance payable to the employees/ pensioners with effect from 1.7.1998 to 31.12.2004 was concerned, it was given effect to only prospectively, with effect from the date on which the government passed the order. Reference in this regard is made to Ext.R1(b) order regarding revision of the dearness allowance with effect from 1.7.1999 to 1.1.2000. Clause-4 of Ext.R1(b) states that *in the case of Public Sector Undertakings/Statutory Corporations where long term agreement exists by which the pre-revised scale plus DA is agreed to the enhancement of DA will be allowed with the approval of the Board of Directors subject to financial viability till a fresh agreement is executed.* Taking note of Clause-4 of Ext.R1(b),

the Board of Directors of the first respondent took a decision on 8.6.2007, by which its earlier decision with regard to the payment of DA arrears was modified and in relation to the period from 1.7.1998 to 31.12.2004, the Company decided to pay the D.A. arrears to its employees and ex-employees, but by limiting it to 65% of the total amount due to them. The petitioners are aggrieved by the fact that the Company took a decision to limit the DA arrears in relation to the period from 1.7.1998 to 31.12.2004 to 65% of the amount otherwise payable. Therefore they have approached this court seeking a direction to pay the entire amount. Apparently the company had expressed its willingness to pay the amount decided as per Ext.R1(c) provided the petitioners and similarly situated employees/pensioners were willing to undertake that receipt of the amount will be in full and final settlement of the claim for arrears for the aforementioned period.

2. Learned counsel for the petitioner submits that DA arrears will have to be treated as part of the wages due to the petitioners and therefore a decision to scale down the D.A. arrears to 65% of the amount otherwise payable will amount to a

reduction in the wages as such. Learned counsel for the company submits that even in the orders issued by the government revising the DA, it has been made clear that insofar as government companies are concerned, such companies would be entitled to fix the date of enforcement of revision of DA in an appropriate manner. The company was running at a loss. Therefore DA was not revised during the above period from 1.7.1998 to 31.12.2004. When the Company's fortunes revived to a certain extent, Board at its meeting held on 8.6.2007, took Ext.R1© decision to pay 65% of the DA arrears to the employees and pensioners. Apparently all the serving employees accepted the decision and out of 395 ex-employees, two employees have approached this court. Learned counsel for the petitioner submits that more than 100 pensioners have not accepted the decision taken by the company as evidenced by Ext.R1©.

3. In my view, if the company was entitled to fix the date of effect of revision of the DA, as empowered under clause-4 of Ext.R1(b) government order and similar orders issued by the government, then a decision taken by the company in the nature of Ext.R1(c) will have to be treated as one in favour of the

employees as such. If the company's fortunes continue to flourish, then there is no reason why the company should not consider whether the balance DA arrears should not be disbursed. I do not express any opinion on the merits of the contentions raised by the petitioner in this regard.

4. In the circumstances, the writ petition is disposed of directing the first respondent to pay the DA arrears due to the petitioner in terms of Ext.R1(c) decision within a period of one month from the date of receipt of a copy of this judgment. Insofar as any claim raised by the petitioners for balance DA arrears is concerned, it is open to the petitioners to approach the second respondent and notwithstanding Ext.R1(c), it is open to the company to take an appropriate decision.

The writ petition is disposed of as above.

V. GIRI, JUDGE

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